

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
COLUMBUS DIVISION**

In Re	)	Case No. 08-58592
	)	
Rocky A. DeVito and	)	Judge C. Kathryn Preston
Pamela S. DeVito,	)	
	)	
Debtors.	)	

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Rocky DeVito and	)	Adv. Pro. No. 09-02117
Pamela J. DeVito,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	
	)	
HSBC MORTGAGE SERVICES	)	<b>AMENDED MOTION FOR</b>
	)	<b>DEFAULT JUDGMENT</b>
Defendant.	)	

Now come the Debtor/Plaintiffs, Rocky & Pamela DeVito, by and through Counsel, pursuant to Bankruptcy Rule 7055 and Fed. R. Civ. P. 55(a), move this Court for entry of default against Defendant, HSBC Mortgage Services, in this Adversary Proceeding. In support, the Debtor/Plaintiff's state the following:

1. Plaintiff's filed their Voluntary Petition for relief under Chapter 13 of the Bankruptcy Code on September 5, 2008.

2. Plaintiff's filed the Complaint herein on March 18, 2009, against HSBC Mortgage Services.

In the Complaint, Plaintiffs sought a judgment against Defendant declaring its claim against Plaintiff's to be declared wholly unsecured, that Defendant's mortgage lien securing its claim to be stripped from Plaintiff's real property and for related relief under 11 U.S.C. § 506, and that Defendant provide proof of the cancellation of its second mortgage lien to counsel for Debtor's no later than 20 days after entry of the Order of Discharge in the underlying

Chapter 13 bankruptcy.

3. Plaintiff's previously sought default judgment against the Defendant. However, this Court denied the motion for the following reasons:
  - a. failure to provide an affidavit in support of service, defendant's failure to answer, and that Defendant is not currently serving in the military.
  - b. failure to provide a certificate of service evidencing service of summon of the complaint upon a duly authorized agent of Defendant.
4. Defendant was re-served with a Summon and a copy of the Complaint by certified mail on September 1, 2009.
5. The summons set a deadline of 30 days, or to October 1, 2009, to answer or otherwise plead.
6. No answer or responsive pleading has been filed by Defendant, nor has counsel for Plaintiffs had any communication from Defendant or a representative of Defendant. Affidavit of Joseph M. Romano, "Exhibit A."
7. The Defendant is not The United States or an agency thereof. *See, Affidavit of Joseph M. Romano*.
8. The Defendant is a corporation and is not in the military service of the United States. *See, Affidavit of Joseph M. Romano*.
9. Due to Defendant's failure to respond to the Complaint or otherwise plead, it is in default.
10. Plaintiff respectfully request this Court grant the Motion.
11. Pursuant to Federal Rule of Bankruptcy Procedure 7055(a), the clerk is empowered to enter a party's default when it has failed to plead or otherwise defend as provided by the Bankruptcy Rules, which facts are made to appear in the attached Affidavit. *See, "Exhibit A."*
12. Therefore, pursuant to Fed. R.Bankr. Pro. 7055(b)(1), if the Plaintiff's claim is for sum

certain or a sum that can be made certain by computation (in this case, the removal of the second mortgage held by HSBC Mortgage Services), the clerk must enter judgment for the amount and costs against a Defendant who has defaulted for failure to answer or otherwise plead.

Wherefore, Plaintiff's pray for the following relief:

1. An entry of an Order of Default in the above-styled Adversary Proceeding as against the Defendant, HSBC Mortgage Services.
2. Grant the relief sought in the complaint and any other such relief as may be appropriate and just.

Respectfully Submitted,

THE ROMANO LAW FIRM

/s/ Joseph M. Romano

Joseph M. Romano (0074709)

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614-850-0777

614-850-0778 (fax)

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion for Default Judgment was served either by certified U.S. mail or via this Court's ECF/CM system on this 20<sup>th</sup> day of October, 2009 upon the following parties:

Frank M. Pees, Chapter 13 Trustee  
(electronically)

HSBC Mortgage Services  
PO Box 21188  
Eagan, MN 55121-4201

HSBC Mortgage Services  
c/o CT Corporation Systems, Statutory Agent  
1300 East 9<sup>th</sup> Street  
Cleveland, OH 44114

/s/ Joseph M. Romano  
Joseph M. Romano (0074709)  
THE ROMANO LAW FIRM  
*Counsel for the Plaintiffs*